

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

TIBAL CLARKE,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-12-577-R
)	
FEDERAL TRANSFER CENTER, <i>et al.</i> ,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

The undersigned recommends dismissal of the action without prejudice to refiling.

The Court granted pauper status on May 22, 2012, and ordered an initial payment of \$11.67 by June 12, 2012. Order Granting Leave to Proceed *in Forma Pauperis* at p. 1 (May 22, 2012); *see* Prison Litigation Reform Act, 28 U.S.C. § 1915(b)(1)(A)-(B). This Court warned Mr. Clarke “that unless by [June 12, 2012] he has either (1) paid the initial partial filing fee, or (2) shown cause in writing for the failure to pay, this action will be subject to dismissal without prejudice to refiling.” Order Granting Leave to Proceed *in Forma Pauperis* at p. 1 (May 22, 2012). To date, however, the Plaintiff has not made the \$11.67 payment or demonstrated good cause for his failure to pay.

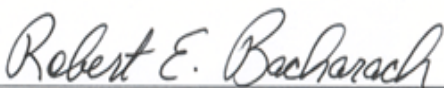
The record does not reflect any excuse for Mr. Clarke’s failure to pay. When the action began, Mr. Clarke had \$63.30 in his institutional accounts and his average monthly deposits for the preceding six months was \$58.33. *See* Application to Proceed in District Court Without Prepaying Fees or Costs at pp. 3-5 (May 21, 2012). Thus, Mr. Clarke apparently had the resources to pay the initial installment of \$11.67. In these circumstances,

the Court should dismiss the action without prejudice to the filing of a new suit. *See Cosby v. Meadors*, 351 F.3d 1324, 1326-33 (10th Cir. 2003) (upholding dismissal of a federal inmate's civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay).

The Plaintiff is advised of his right to object to this report and recommendation by July 6, 2012. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(d), 72(b)(2). If the Plaintiff does object, he must file the objection with the Court Clerk for the United States District Court, Western District of Oklahoma. The Plaintiff is further advised that if he does not timely object, he would waive his right to review by the Tenth Circuit Court of Appeals. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The referral is discharged.

Entered this 19th day of June, 2012.



Robert E. Bacharach
United States Magistrate Judge